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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,))
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
)
Plaintiff,)
)
vs.) 4:05-CV-00329-TCK-SAJ
)
TYSON FOODS, INC., et al,)
)
Defendants.)

- - - - -

VOLUME I OF THE VIDEOTAPED
DEPOSITION OF ROGER OLSEN, PhD, produced as a
witness on behalf of the Defendants in the above
styled and numbered cause, taken on the 10th day of
September, 2008, in the City of Tulsa, County of
Tulsa, State of Oklahoma, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

1 that, Mr. Page.

2 Q Dr. Olsen, let me hand you what is marked as
3 Exhibit 3 to your deposition. Can you identify
4 Exhibit 3 for the Record? It's a collection of lab
5 reports, but could you provide a general
6 description, please?

01:31PM

7 A They're lab reports from a laboratory called
8 Environmental Microbiology Laboratory, Incorporated,
9 typically referred to as EML, and EML is doing
10 bacterial analysis of samples collected from the
11 watershed.

01:32PM

12 Q EML is the principal lab that CDM used for its
13 bacterial work on surface water samples; is that
14 right?

15 A That's correct.

01:32PM

16 Q Okay. To the extent there is bacterial data
17 that's used in your analysis, does it generally come
18 from EML?

19 A Yes.

20 Q Okay. Could you turn -- I need some help in
21 interpreting some of these things. Could you turn
22 to the page that at the bottom is number ending in
23 3, 0003, and at the top you see your name. You're
24 listed as the client; correct?

01:32PM

25 A Yes, uh-huh.

01:33PM

1 Q Okay. Just to the right of that, there is a
2 series of dates. Do you see those?

3 A Yes.

4 Q And on this particular one, for example, it
5 says date of sampling 4-20-2006; do you see that?

01:33PM

6 A I have the three on mine. So you're not
7 looking at the last three; you're looking at the
8 second to the last three?

9 Q No.

10 A There's lot of threes here. You want 33?

01:33PM

11 Q Yes, sir. I'm sorry, I didn't realize there
12 was two sets of three. Thank you.

13 A I was at the second set. Okay.

14 Q Just so we're clear, let's identify this page.

15 At the bottom it's Bates number Olsen 0000773.0003;
16 correct?

01:33PM

17 A That's correct. I'm on the right page now.

18 Q Thank you. The date of sampling on this
19 particular report is listed as 4-2 0-2006; do you
20 see that?

01:33PM

21 A Yes.

22 Q What does that reflect; what does that mean,
23 date of sampling?

24 A Well, these were data collected by USGS, and
25 typically we don't do their analysis. They do a

01:34PM

1 cooperative program with the State, but their labs
2 were not set up to do the breadth of analysis of all
3 the different types of bacteria that we wanted, so
4 we had a cooperative agreement with them, and they
5 would send splits of their samples to a laboratory.

01:34PM

6 So they sampled it on 4-20-2006.

7 Q And when you say sampled, Dr. Olsen, you mean
8 that's the data which this particular water sample
9 was collected from river or whatever it was
10 collected from; right?

01:34PM

11 A Yeah, and if you go over to the chain of
12 custody, you can see that Monica Allen did that
13 sampling for the USGS on 4-20-06 and, you know, she
14 actually has the time there of at 12 -- I can't read
15 her writing for sure. Looks like 1230 and it was
16 shipped at 1600 that day.

01:35PM

17 Q Okay.

18 A But the sampling was done on 4-20, and that's
19 what that reflects.

20 Q Thank you. Dr. Olsen, the next heading are
21 labeled as date of receipt and it shows the
22 following date, 4-21-2006; do you see that?

01:35PM

23 A Yes.

24 Q And that was the date this sample was received
25 by whom?

01:35PM

1 A That's the laboratory. Again, you can see
2 that on the next page. Ann Morrissey at EML
3 received the sample the next morning at 9:30 a.m. on
4 4-21-06.

5 Q Okay. The next date is the date of prep. 01:35PM
6 What does that mean?

7 A That's -- they immediately started the
8 analytical procedure, which in this case means a
9 series of dilutions, put them in an incubator and
10 letting the plates start to grow as I understand. 01:36PM

11 Q And what is the date of analysis of 4-23-2006?

12 A I would assume that's when they actually took
13 the plates out of the incubator and did the counts
14 on them.

15 Q At what time on, if you know, can you tell 01:36PM
16 from your records there, on 4-21 did the prep of the
17 sample begin?

18 A I don't know. You can't tell from this. They
19 got it at 9:30 a.m.

20 Q It was collected at 12:30 on the 20th and was 01:36PM
21 received in the lab at 9:00 a.m. the following day?

22 A 9:30 a.m.

23 Q 9:30 a.m., okay. So a span of nine hours
24 between collection and receipt by the lab; is that
25 right? 01:36PM

1 A More than that.

2 Q Oh, it was 12:30 in the day, not 12:30 at
3 night?

4 A Yeah.

5 Q So it would have been a span of 21 hours? 01:36PM

6 A Yeah, about 21 hours.

7 Q Okay. Thank you. Now, the next date is the
8 date of the report. What does that mean?

9 A That's the date they generated this report, so
10 that should reflect the same. That's when they 01:37PM
11 wrote this up.

12 Q Okay.

13 A This report that we see in front of us.

14 Q Now, if you'll turn back a page in the stack
15 to 0002, do you see that? 01:37PM

16 A Yes, uh-huh.

17 Q Some of these reports only have date of
18 sampling, date of receipt and date of report, no
19 date of prep or date of analysis; do you see that
20 difference? 01:37PM

21 A Yes.

22 Q Why is it different?

23 A I don't know for sure why they forgot to add
24 that in some of these.

25 Q Can you tell at what time the sample that's 01:37PM

1 shown at 7-73.002 was collected?

2 A Well, this is all the same sample. This is
3 just one sample we have here. It's just one sample,
4 Chewy. So it was all done at the same time, just
5 one shipment, one, you know, one, you know -- all of
6 the different bacteria, seven different bacteria but
7 it was just one sample that was shipped. It was
8 sampled the same time, received at the same time,
9 and I don't know, you know, if they had different

01:38PM

10 prep times for the Campylobacter (sic) versus the
11 others ones or not. It's not reflected on here.

01:38PM

12 Q Dr. Olsen, did CDM follow any particular hold
13 time procedure which precluded the use of bacteria
14 enumeration analysis conducted more than so many
15 days or so many hours after a sample was collected
16 in the field?

01:39PM

17 A No.

18 Q Why not?

19 A We actually looked at that, and there's
20 variable recommendations in the literature, and
21 there's variable results depending on, you know, how
22 long it is, depending on what program you are
23 sampling under. So some of those are much longer
24 than 24 hours, and that shows that there isn't any
25 effect of bacterial data. Ultimately, you know, I

01:39PM

01:39PM

1 left it to Dr. Harwood to evaluate, you know, the
2 quality of this particular set of data, the EML
3 data.

4 Q Okay. Can you refer me to any literature that
5 you're recalling that would specify up to a
6 24-hour -- did you say 24-hour hold time for
7 bacteria?

01:39PM

8 A I think there's a lot of literature that
9 specify more than a 24-hour hold time. I can get
10 you all that. There's some up to 96 hours that show
11 there's no difference, and because of all that
12 literature, we did not qualify any of the data.

01:40PM

13 Q Okay. None of the bacteria data was qualified
14 or rejected based on hold times; correct?

15 A None of EML data as far as I know.

01:40PM

16 Q Okay. You agree that the analysis that is
17 occurring at EML with respect to the -- these
18 bacteria samples is enumeration; do you understand
19 that term?

20 A Yes, I think I do.

01:40PM

21 Q Or counting --

22 A Yes.

23 Q -- bacteria?

24 A Yes.

25 Q Okay, and you agree with me that the hold

01:40PM

1 times from collection until analysis on the bacteria
2 data that was analyzed by EML exceeds eight hours?

3 A What were the two dates?

4 Q Well, no two particular dates. Are you
5 aware --

01:41PM

6 A Well, you have to look at the -- when it was
7 received and, you know, when it was prepped versus
8 analysis time.

9 Q Let me ask this.

10 A Because they start -- that's when the analysis
11 really starts. You know, they get it right in the
12 incubator and that's when -- that's the critical
13 time.

01:41PM

14 Q All of the bacteria samples were collected in
15 northeast Oklahoma or northwest Arkansas; right?

01:41PM

16 A Yes.

17 Q And the actual lab that analyzed these is
18 located in where?

19 A California.

20 Q Okay. So I assume, unless CDM had its own
21 plane and flew back and forth, that you Fed Ex'd
22 these samples; is that right?

01:41PM

23 A Yes. In this case USGS Fed Ex'd them, the
24 sample we're looking at.

25 Q Are you aware of any instance in which a lab

01:41PM

1 would have received a sample within eight hours of
2 it being collected?

3 A Given the Fed Ex schedule, it was typically
4 over eight hours.

5 Q Okay. You said that you had looked at some 01:42PM
6 literature around hold times for bacteria. Did you
7 ever consult any EPA publications or guidelines to
8 see what they recommended?

9 A Yeah, and that's what I was referring to, the
10 literature. Again, that's in my opinion. Once I 01:42PM
11 looked at it and the actual scientific evaluations
12 behind it, that, you know, there was variable hold
13 times, and there was in my opinion variable
14 recommendation times by different agencies.

15 Q Well, you agree that EPA is a credible agency 01:42PM
16 in the areas of environmental sampling and analysis;
17 right?

18 A Yes.

19 Q Okay. In fact, you've done considerable work
20 for EPA, have you not? 01:42PM

21 A Yes.

22 Q You believe their standards are in keeping
23 with the rigors of the scientific methods?

24 A Yes.

25 Q Let me refer you to what I've marked as 01:42PM

1 Exhibit 4 to your deposition. Can you read the
2 title of Exhibit 4 first?

3 A Improved Enumeration Methods For the
4 Recreational Water Quality Indicators, Enterococci
5 and -- I can't even pronounce these -- E. coli. 01:43PM

6 Q And you do agree, do you not, Dr. Olsen, that
7 some of the types of bacteria that were enumerated
8 in these samples by EML were Enterococci and E.
9 coli?

10 A That's correct. 01:43PM

11 Q Can you turn to Page 3 in this EPA publication
12 under sample collection, preservation and storage;
13 do you see that section?

14 A Yes.

15 Q And could you read for the Record the third 01:44PM
16 sentence in that paragraph?

17 A Samples should not be held longer than six
18 hours prior to analysis. An analysis should be
19 completed within eight hours after collection of
20 samples. 01:44PM

21 Q Did you meet EPA's recommendations as stated
22 in this exhibit on Page 3 with respect to any of the
23 bacteria analysis completed for this case?

24 A Not the EML samples.

25 Q Well, were there another set of samples not 01:44PM